

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

JEFFERY D. GURKE,

Plaintiff,

vs.

ROBERT H. GRESHAM,

Defendant.

5:19-CV-05037-KES

ORDER

This action came before the court for trial by jury. The jury awarded plaintiff, Jeffery D. Gurke, damages in the amount of \$54,661.83 for medical expenses. Docket 46. Gurke now moves for pre-judgment interest on the award. Docket 51. Defendant, Robert H. Gresham, filed a reply, but his reply only responded to Gurke's bill of costs and did not respond to the motion for pre-judgment interest. Docket 55. The time for response to the motion for pre-judgment interest has passed.

The court has supplemental jurisdiction over the state-law claims under 28 U.S.C. § 1367(a). A federal court exercising supplemental jurisdiction is bound to apply the substantive state law concerning the claims. *Emmenegger v. Bull Moose Tube Co.*, 324 F.3d 616, 624 n.9 (8th Cir. 2003). Under South Dakota law, pre-judgment interest runs from the day that the loss or damage occurred through the date of the verdict. SDCL § 21-1-13.1. In a tort action, pre-judgment interest is calculated at the Category B rate of interest, which is 10%. SDCL § 54-3-16. Applying this rate of interest to each medical bill as of

the date on each medical bill, the court finds that Gurke is entitled to pre-judgment interest in the total amount of \$31,058.10.¹

Gurke also moves for post-judgment interest under 28 USC § 1961(a). Gurke is entitled to an award of post-judgment interest, but the court is unable to calculate that amount because it does not know the date on which Gresham will pay the judgment. The parties should calculate the post-judgment interest at that time.

DATED August 29, 2023.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER

UNITED STATES DISTRICT JUDGE

¹ Gurke's motion erroneously calculates the total amount of pre-judgment interest to be \$23,986.42. If you add the figures in Gurke's Amount column, however, it actually totals \$30,537.61. The court used the same daily rate as Gurke used in his calculations, but increased the number of days to judgment by 36, which represents the time from when Gurke's motion was filed to the date of entry of this order. That explains the slight increase between the adjusted Amount column and the amount awarded by the court.